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CHAPTER 13-A-1. GROUND WATER RESOURCES MANAGEMENT

§3097.1. Legislative findings; purpose; effect

A. As the effective management and planning in the utilization of the state's water resources is hereby found and declared to be a matter of public interest, the state must have a comprehensive ground water management program. Said program must take into consideration the requirements, needs, and obligations of all stakeholders of water in the state of Louisiana. The program shall be based on good management practices, sound science, and economics according to generally accepted principles in those disciplines. It must include as a goal the long-term sustainability of the state's ground water aquifers and preservation of the state's ecological welfare, while considering the economic value thereof to the state's role in interstate commerce and the economic welfare of its citizens. Further, it must provide for the efficient administration in the utilization and management of ground water resources, including the gathering of data related to the state's water resources. Thus, the state's water resources must be protected, conserved, managed, and replenished in an effective manner, with due regard for the foregoing considerations and in the best interest of all the citizens of the state.

B. The legislature hereby recognizes the need for uniformity in the establishment of a comprehensive ground water management program. Therefore, the state shall have exclusive jurisdiction over the management of ground water and this Chapter shall supersede and preempt any rule, regulation, code, statute, or ordinance of any political subdivision or other unit of local government. However, nothing contained in this Chapter shall be construed to deny such local government the authority over siting facilities pursuant to any general land use planning or zoning or to deny soil and water conservation districts powers granted pursuant to R.S. 3:1208.

C. In accordance with the legislative intent provided herein, the statewide ground water resource management program and any rule, regulation, or order of the commissioner shall recognize historic use of ground water resources in the state and may incorporate the use of appropriate incentives to encourage conservation of ground water resources and the appropriate utilization of alternate water supplies where appropriate. Consistent with the provisions of this Chapter and in consultation with the commissioner, the incentives and provisions of alternate water resources may be provided by the state, or any local subdivision thereof, by virtue of tax incentives, tax credits, and physical projects transporting or providing alternate water resources to existing ground water users and by any private person with an interest in conserving such ground water resources for public use.

Acts 2003, No. 49, §2, eff. July 1, 2003.

§3097.2. Definitions

Unless the context otherwise requires, the following terms shall have the following meanings for purposes of this Chapter:

(1) "Area of ground water concern" shall mean an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front, water level decline, or

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subsidence, resulting in unacceptable environmental, economic, social, or health impact, or causing serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts. An area of ground water concern, declared pursuant to R.S. 38:3097.6, shall be designated a critical area of ground water concern when the commissioner finds that sustainability cannot be maintained without withdrawal restrictions.

(2) "Beneficial use" means the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purpose, or any other advantageous purpose.

(3) "Commission" shall mean the Ground Water Resources Commission, established by R.S. 38:3097.4.

(4) "Commissioner" shall mean the commissioner of conservation.

(5) "Domestic well" shall mean a water well used exclusively to supply the household needs of the owner, lessee, or his family. Uses may include but are not limited to drinking, cooking, washing, sanitary purposes, lawn and garden watering, and caring for pets. Domestic wells shall also include wells used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds.

(6) "Ground water" is water suitable for any beneficial use percolating below the earth's surface which contains fewer than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

(7) "Ground water emergency" shall mean an unanticipated occurrence as a result of a natural force or a man-made act which causes a ground water source to become immediately unavailable for beneficial use for the foreseeable future or drought conditions determined by the commissioner to warrant the temporary use of drought relief wells to assure the sustained production of agricultural products in the state.

(8) "Historic ground water production" means the average annual production of a ground water well since the calendar year 1995.

(9) "Large volume well" means a well with an exterior casing size of eight inches or greater in diameter, or as defined by rules and regulations promulgated by the commissioner pursuant to the Administrative Procedure Act.

(10) "Person" shall mean any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

(11) "Replacement well" shall mean a well located within one thousand feet of the original well and within the same property boundary as the original well, installed within the same aquifer over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original well.

(12) "Spacing" means the distance a water well may be located in relation to an existing or proposed water well, regardless of property boundaries.

(13) "Sustainability" means the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

(14) "User" shall mean any person who is making beneficial use of ground water from a well or wells owned or operated by such person.

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(15) "Well" or "water well" shall mean any well drilled or constructed for the principal purpose of producing ground water.

Acts 2003, No. 49, §2, eff. July 1, 2003.

§3097.3. Commissioner of conservation; powers and duties

A. The commissioner, through the office of conservation, is empowered and responsible for the administration of all matters related to the management of the state's ground water resources by providing for the most advantageous use of the resource consistent with the protection, conservation, and replenishment thereof. The commissioner shall perform these functions to the extent such functions are not specifically within the jurisdiction of other state departments or agencies. The commissioner shall seek the advice and consultation of local governmental entities on any actions or decisions which may have an impact upon those entities or residents within the entities' respective jurisdictions.

B. The commissioner is authorized to employ, assign, and remove personnel, including a deputy, within the Department of Natural Resources, office of conservation, to provide administrative and technical staff functions the commissioner deems necessary to carry out the powers, functions, and duties under this Chapter. Personnel actions shall be in accordance with applicable civil service laws, rules, and regulations, and with the policies and rules of the department, all subject to budgetary control and applicable laws.

C. The commissioner has authority to make, after notice and public hearings in accordance with the Administrative Procedure Act, any reasonable rules, regulations, and orders that are necessary from time to time in the proper administration and enforcement of this Chapter, including rules, regulations, or orders for the following purposes:

(1) Do all things necessary to prevent waste of water resources.

(2) Prevent or alleviate damaging or potentially damaging salt water movement or water level decline and loss of sustainability in the state's aquifers in accordance with Paragraph (4) of this Subsection.

(3) Prevent subsidence of the land surface caused by the withdrawal of ground water within the state in accordance with Paragraph (4) of this Subsection.

(4)(a) Require registration of all new wells by the owners. Such registration shall at a minimum require the date drilled or the estimated date to be drilled, the name of the driller, the current ownership, and the projected location of the well in latitude, longitude, and depth, and casing size together with such other information as the commissioner may reasonably require. The commissioner and the Department of Transportation and Development shall cooperate to ensure the efficient and effective collection of well data. Registration shall be in the form of a notice of intent to drill submitted to the commissioner at least sixty days prior to drilling the well, except for the following types of wells which shall be registered no later than sixty days after completing the well:

(i) Domestic well.

(ii) Replacement well.

(iii) Drilling rig supply well, used only for the duration of the oil and gas drilling operation at the drilling location where sited for the immediate needs of rig operations.

(iv) Drought relief wells.

(v) All other wells the commissioner exempts for just cause.

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(b) Within thirty days of receiving the well registration, the commissioner shall review the submitted information. During the thirty-day review period, the commissioner may either issue an order to the owner placing restrictions on the well or requesting further reasonable information on the well or may take no action. Prior to any order placing a restriction on a well, the commissioner shall determine, on the basis of good management practices and sound science, that such action is necessary to prevent adverse impacts to the sustainability of the aquifer from which the proposed well is to produce. An order placing restrictions on spacing may also be issued to avoid direct adverse impacts to existing wells. Restrictions and requests for information shall be subject to the following:

(i) For large volume wells or wells within a *critical area of ground water concern*, the commissioner may issue to the owner of such well an order fixing allowable production, spacing, and metering necessary to properly manage the state's ground water resources consistent with R.S. 38:3097.6(B)(3). Before issuing any order placing restrictions on a well outside a *critical area of ground water concern*, the commissioner shall consider a well owner's efforts to develop alternate water sources.

(ii) For all other wells located outside a *critical area of ground water concern*, an order issued by the commissioner may only fix spacing of the well.

(iii) If more information is requested, the commissioner shall have an additional thirty days after receiving the additional information for review. The commissioner's request for further information may be appealed to the commission to determine the reasonableness of the request. Such determination shall be made within forty-five days from the date of the appeal.

(5) Determine areas of ground water concern and designate critical areas of ground water concern in accordance with R.S. 38:3097.6.

(6) Collect data with respect to water wells and water resources.

(7) Continue development of a statewide ground water resource management program that shall include but not be limited to evaluation of the state's water resources including current and projected demands; development of a water use conservation program; study of alternatives to ground water use, such as surface water to include treatment and transmission system, and reclaimed water; incentives for conservation; use of alternative technologies; and education and conservation programs. The plan should stress conservation as the primary mechanism for the protection of the state's ground water resources.

(8) Develop a contingency plan to respond to a ground water emergency. Such a plan shall provide that ground water needed for human consumption shall have the highest priority. If the commissioner declares a ground water emergency, he shall define the geographical extent of the area included in the emergency by rule or order, may retain personnel or let contracts as necessary with persons who shall operate under his direction to abate the emergency conditions, and may fix the allowable production, spacing, and depth for wells within the area in such a way that the combined production of ground water will not have long-term adverse effects on the aquifer.

(9) Authorize the temporary use of drought relief wells for agricultural use in times of drought upon a determination that sufficient water resources are otherwise not available. The commissioner shall fix the allowable production, spacing, and depth for such wells in the issuance of an emergency order in such a way that the combined

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production of ground water from such wells will not have long-term adverse effects on the aquifer.

(10) Enter interagency agreements and interstate compacts in order to manage ground water resources. Such interstate compacts shall only be entered upon approval of the House Committee on the Environment and the Senate Committee on Environmental Quality.

D. Any rule or regulation promulgated or any critical ground water area declared by the Ground Water Management Commission pursuant to authority granted by Act No. 446 of the 2001 Regular Session shall remain in effect until July 1, 2004, or until such time as the commissioner promulgates rules pursuant to this Section or reviews any previously declared critical area.

Acts 2003, No. 49, §2, eff. July 1, 2003.

§3097.4. Ground Water Resources Commission; membership; powers and responsibilities

A. The Ground Water Resources Commission is hereby created and shall be composed of the following members:

- (1) The governor or his designee.
- (2) The commissioner of conservation or his designee.
- (3) The commissioner of agriculture and forestry or his designee.
- (4) The secretary of the Department of Economic Development or his designee.
- (5) The secretary of the Department of Environmental Quality or his designee.
- (6) The secretary of the Department of Health and Hospitals or his designee.
- (7) The secretary of the Department of Wildlife and Fisheries or his designee.
- (8) The secretary of the Department of Transportation and Development or his designee.

(9) The director of the Governor's Office of Coastal Activities or his designee.

(10) One member appointed by the governor, who is a geologist or an engineer with expertise in ground water resource management.

(11) One member appointed by the governor from a list of four nominations submitted jointly by the Louisiana Chemical Association, the Louisiana Mid-Continent Oil & Gas Association, the Louisiana Association of Business and Industry, and the Louisiana Pulp & Paper Association.

(12) One member appointed by the governor from a list of three names nominated by the Louisiana Farm Bureau.

(13) One member appointed by the governor from a list of three nominations submitted by the Police Jury Association of Louisiana.

(14) One member appointed by the governor from a list of three nominations submitted by the Louisiana Municipal Association.

(15) One member appointed by the governor from a list of three nominations submitted by the Sparta Groundwater Conservation District Board of Commissioners.

(16) One member appointed by the governor from a list of three nominations submitted by the board of commissioners of the Capital Area Groundwater Conservation District.

(17) One member appointed by the governor who resides or works in the geographical area of the state underlain by the Chicot aquifer.

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(18) One member appointed by the governor from a list of three nominations submitted by the Louisiana Landowners Association.

(19) One member appointed by the governor from a list of three names submitted by the Louisiana Wildlife Federation, Coalition to Restore Coastal Louisiana, and the League of Women Voters.

B. The appointed members of the commission shall serve four-year terms except for the initial term, in which the governor shall designate the terms of office so that three members shall serve a one-year term, three members shall serve a two-year term, and four members shall serve a three-year term. No appointed member shall serve more than two consecutive terms. In case of a vacancy, the governor shall appoint a replacement to fill the unexpired term. Appointed members shall not be compensated for their services, except the commissioner may promulgate rules and regulations to provide for travel expenses. Appointed members shall be considered as such, and not elected, for the purposes of R.S. 42:1102 et seq.

C. The governor or his designee shall serve as chairman of the commission. The commission shall meet at least once per quarter, but may meet more often as necessary.

D. The commission shall have the authority to do the following:

(1) Review and approve or reject any orders of the commissioner placing restrictions on wells upon petition by the owner of the affected well or proposed well or any owner of a well in the same aquifer which may be adversely impacted by the well in question. In reviewing such decisions the commissioner shall not serve as a voting member of the commission. The order of the commissioner shall be rejected only if the commission concludes, after a review of the record, that a reasonable factual basis does not exist for the commissioner's decision. Rejected orders shall be returned to the commissioner for reconsideration. An order that has been returned to the commissioner twice shall be considered a final decision and eligible for judicial review pursuant to R.S. 38:3097.5.

(2) Review rules and regulations proposed by the commissioner pursuant to the proper administration and enforcement of this Chapter.

(3) Continue the development, in cooperation with the commissioner, of a statewide ground water resource management program that shall include but not be limited to evaluation of the state's ground water resources including current and projected demands; development of a water use conservation program; study of alternatives to ground water use, such as surface water to include treatment and transmission system, and reclaimed water; incentives for conservation; use of alternative technologies; and education and conservation programs. The plan should stress conservation as the primary mechanism for the protection of the state's ground water resources. The commission shall also hold public hearings and consult with local governmental entities in the development of this program.

(4) Review the contingency plan developed by the commissioner to respond to a ground water emergency.

(5) The commission may direct the commissioner to promulgate rules and regulations for the appointment or designation of up to five regional bodies based on the general location of major aquifer systems and water sources of the state and composed of local stakeholders who are representative of current users. Such bodies may gather data and provide local input to the commission and the commissioner.

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(6) At their discretion, attend all public meetings called by the commissioner pursuant to his power and duties in this Chapter.

Acts 2003, No. 49, §2, eff. July 1, 2003.

§3097.5. Judicial review

A. The owner of the affected well or proposed well or any owner of a well in the same aquifer which may be significantly and adversely impacted by the well at issue may appeal devolutively a final determination by the commissioner only to the Nineteenth Judicial District Court. A petition for review must be filed in the district court within thirty days after notice of the final decision being appealed has been given. Copies of the petition shall be served upon the commissioner. The district court shall grant the petition for review. The commissioner shall not be required to file an answer to the petition for review.

B. The provisions of R.S. 49:964(C), (D), (F), and (G), including the standard of review, shall apply to petitions for judicial review provided in this Section.

C. Judicial review regarding well restriction orders shall be decided by the court summarily and by preference. In no case shall the date for a final decision on the merits of such review or appeals extend beyond the ninetieth day after receipt by the court of the record for adjudication. The court in its discretion may issue further orders consistent with the Louisiana Code of Civil Procedure to carry out the summary mandate of such reviews or appeals.

Acts 2003, No. 49, §2, eff. July 1, 2003.

§3097.6. Determination of area of ground water concern

A. Any owner of a well that is significantly and adversely affected as a result of the movement of a salt water front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an area underlain by such aquifer is an area of ground water concern. Such application shall contain a statement of facts and supporting evidence substantiating the area may be an area of ground water concern as defined in R.S. 38:3097.2. On the basis of the application, good management practices, and sound science, the commissioner shall either deny the request, in writing, or issue a draft order which describes the proposed boundaries of the area of ground water concern. If the commissioner issues a draft order describing the proposed boundaries of the area of ground water concern, the commissioner shall hold at least one public hearing in the locality of the proposed boundaries. At least thirty days prior to holding the public hearing, the commissioner shall provide copies of the draft order to the House Committee on Natural Resources and to the Senate Committee on Natural Resources.

B. After holding hearings, the commissioner shall issue a written decision based on good management practices and scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. If the commissioner has determined that an area of ground water concern exists, his decision shall be in the form of an order that shall describe the boundaries of the area which is determined to be an area of ground water concern. The order shall also contain a

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plan to preserve and manage the ground water resources in that area which may include but is not limited to the following:

- (1) Educational and conservation programs.
- (2) Incentives to reduce ground water use.
- (3) If the commissioner designates an area a critical area of ground water concern, the order may restrict the amount of withdrawals by any or all users in the area. In determining restrictions on withdrawals, the commissioner shall consider the following:
 - (a) Ground water needed for human consumption and public health and safety shall have the highest priority.
 - (b) Uses other than human consumption and public health and safety shall have equal priority.
 - (c) Historical use.
 - (d) Ability, including economic ability, of a particular user to relocate to an alternative source of water.
 - (e) User's conservation efforts and actual reductions in water usage, taking into account historic ground water production.